IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.815 OF 2005
IN
NOTICE OF MOTION NO.1449 OF 2003
IN
SUIT NO.1388 OF 2003

Shopper's Delight Pvt.Ltd. Appellant
vs.
Lake View Developers & ors. Respondents

Mr.Janak Dwarkadas, senior counsel with Mr.Arif Bookwala with Mr.Pratik Sakseria i/b.M/s.Bilawala & Co. for the appellant.

Mr.Shyam Diwan, senior counsel with Mr.P.K.Shroff with Mr.Subodh Joshi with Ms.Radhika A. Pinzara i/b.M/s.Parimal K. Shroff & Co. for the respondents 1 to 5.

Mr.D.D.Madon with Mr.Cyrus Bharucha i/b.M/s.Kanga & Co. for the respondent no.6.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 21st November 2005

P.C.

Heard Mr.Janak Dwarkadas, the learned senior counsel for the appellant and Mr.Shyam Diwan, the learned senior counsel for the respondents 1 to 5.

2. By the impugned order, the learned motion Judge has dismissed the notice of motion taken out by the appellant (original plaintiff). The plaintiff filed the suit for specific performance of the agreement which, according to the plaintiff, is contained in the letter

dated 2.8.2001.

3. The letter dated 2.8.2001 reads thus:

"LAKE-VIEW DEVELOPERS

2nd August 2001,

To
M/s.Shoppers Delight (P) Ltd.,
503, Vertex Vikas,
Behind Police Station,
Andheri (E),
Mumbai-400 069.

Kind Attn.: Mr.Purohit.

Ref: Commercial premises on the ground floor,
admeasuring 7,500 sq.ft. in the building,
"Titus" at Hiranandani Gardens, Powai.

Dear Mr.Purohit,

This is further to your confirmation and the token amount of Rs. 5 lakhs received towards the above captioned premises. The total consideration for the same shall be as follows:-

Building	Titus
Floor	Ground floor
Area (built up)	Approx. 7,500 sq.ft.
Rate	Rs.4,000/- per sq.ft.
Total consideration:	Rs.3,00,00,000/-.
Less Advance paid	Rs.5,00,000/-
Balance consideration payable	Rs.295,00,000/-

We further wish to confirm that the cost of the additional six covered car parks (as mentioned in the MOU for "Zenta") for a total consideration of Rs. 9 lakhs shall be treated as a token advance towards the consideration for the commercial premises in "Titus".

Hence the said amount of Rs.9 lakhs shall be reduced from the total consideration for the commercial premises in "Titus" at the time of signing of the Memorandum of Understanding (MOU) for the premises in the building

"Titus".

Any additional car parks over and above the car parks as mentioned in the MOU for the commercial premises in the building "Zenta" shall be at a additional cost as mentioned below:

* Covered car park	Rs.1,50,000/- per car park
* Open to sky car park	Rs.25,000/- per car park.

We hope that you shall find the above in order.

Regards,
for LAKLE VIEW DEVELOPERS
Sd/-
Authorised Signatory."

4. The learned motion Judge held that the said letter does not spell out the concluded contract. The prima facie view of the learned motion Judge does not seem to suffer from any infirmity. As a matter of fact, from the plaintiff's own communication (email) dated 28.3.2002 it appears that in the letter dated 2.8.2001 the final terms were not settled between the parties. In the communication dated 28.3.2002 sent by the plaintiff it is stated thus:

"Further to your telephonic talk with Ashokbhai we further confirm our interest in the entire, Ground floor of the new building Titus. Being close to year ending and with ongoing commitments we are unable to meet for the final discussions for agreed terms."

5. At this stage, therefore, it cannot be said that the letter dated 2.8.2001 spells out the concluded

contract. Needless to say that this view is only tentative for consideration of the interim relief and shall have no bearing at the time of hearing of the Suit.

6. We, accordingly, find no justifiable ground to interfere in the impugned order. However, we observe that the defendants 1 to 5 as and when enter into any agreement with any person/s in respect of the suit property, such person/s shall be informed about the pendency of the Suit.

7. With the aforesaid observation, the appeal is dismissed in limine.

(R. M. LODHA, J.)

(D. G. KARNIK, J.)